chusetts cases. *Edwards* v. *Gasolene Works*, 168 Mass. 564; *Coal Co.* v. *Rogers*, 108 Pa. St. 147. On the other hand, it expressly overrules a well-considered decision of the Circuit Court of Appeals (6th Cir.), *Andrews Brothers Co.* v. *Youngstown Coke Co.*, 86 Fed. Rep. 585. Further, the leading case of *Liverpool Insurance Co.* v. *Massachusetts*, 10 Wall. 566, does not appear to have been called to the court's attention, and would seem to conflict with the principal case. Indeed, a Pennsylvania partnership association possesses more of the ordinary attributes of a corporation than the organization there held to be a corporation, as the latter could only sue and be sued in the name of an officer, and the liability of the stockholders was not limited. In one respect only is a Pennsylvania partnership association less like the normal corporation, — there is a provision for a *dilectus personarum* on the transfer of stock unless the members of the association, in their by-laws, otherwise provide. But that would seem to be really immaterial. It is often found in social clubs which are admittedly none the less corporations. It has even been said that no provision for succession is necessary. *Gifford* v. *Livingston*, 2 Denio, 395. The opinion of the court leaves to conjecture what attribute of a corporation was found lacking. But on the whole the test applied seems to be that an organization is or is not a corporation according as it is called by that or some other name in its charter, — certainly not a very scientific classification.

EFFECT OF NOLLE PROSEQUI IN MALICIOUS PROSECUTION. — A recent decision has reopened a controversy of long standing which had apparently been closed by a line of modern cases. The plaintiff was arrested on a warrant but the examining magistrate, without hearing any evidence, discharged the accused and dismissed the complaint. The court held this act equivalent to a *nolle prosequi* and therefore not a sufficient termination of the proceedings to maintain an action for malicious prosecution. *Ward* v. *Reasor*, 36 S. E. Rep. 470 (Va.). While this view has some backing, both reason and the trend of authority reject it. *Murphy* v. *Moore*, 11 Atl. Rep. 665 (Pa.).

In early times, the only remedy available for one who had been maliciously accused was conspiracy, and to maintain this, he must show a complete acquittal. But later, when an action for malicious prosecution was allowed, all that was necessary was a termination of the proceedings favorable to the accused. 2 Vin. Abr. 28. This distinction was not well understood by the courts and as, at that time, there was a mistrust of a *nolle prosequi* owing to its abuse by the public prosecutor, no little uncertainty as to its effect was caused. *Goddard* v. *Smith*, 6 Mod. 261.

The modern courts are misled both by these old English cases and by a misunderstanding of the allegations. It is not necessary that there should be an end to all prosecution upon that charge, but that the particular prosecution complained of shall have been finished. Unless this were so, no action could be founded upon an *ignoramus* by the grand jury, nor upon a discharge in a preliminary hearing, for, in both these cases, new proceedings may be begun. Thus there would be no remedy in those cases where the charge was least justified. A *nolle prosequi*, when put into force by a discharge, ends the particular prosecution, and in order to proceed against the accused again a new prosecution must

be instituted. *Woodworth* v. *Mills*, 61 Wis. 44. The courts have also failed to distinguish carefully the allegations of lack of probable cause and termination of the prosecution. The reason for this latter allegation is merely to obviate the possibility of two proceedings upon the same dispute pending at the same time. Bishop, Non-Contract Law, § 246. After termination of the proceedings has been shown, the task of proving a lack of probable cause still remains, and while this may be rendered more difficult by the manner of ending the prosecution, yet so long as there has not been a verdict of guilty, the fact that it has ended cannot be affected by the mode of closing it. When this distinction is kept in mind, there would seem to be no reason for insisting, as does the court in the principal case, that one cannot allege an end of the prosecution until some other court has passed on the question of probable cause. *Kennedy* v. *Holladay*, 25 Mo. App. 503.

CONFLICTING EQUITIES IN A PROMISSORY NOTE. — The decision of the English Court of Appeal in *Nash* v. *De Frèville*, [1900] 2 Q. B. 72, reversing the judgment of the late Lord Russell of Killowen, is distinctly unfortunate. The defendant gave to one Peed three demand notes, under the express agreement that they should not be negotiated. Subsequently the defendant gave to Peed, under a similar agreement, two other demand notes in substitution for the first three, which, however, he neglected to take back. Peed, breaking faith with the defendant, negotiated all five notes to the plaintiff, a purchaser for value, without notice. Later the defendant paid Peed all he owed him on the notes, but again supposing them to be in Peed's possession, he failed to demand their return. Just before absconding Peed fraudulently induced the plaintiff to give up the notes, which he then mailed to the defendant. The latter, on receiving them, regarding the transactions with Peed as closed, destroyed the notes. On discovering Peed's fraud, the plaintiff brought his action against the defendant to recover the value of the notes, amounting to £5300. The court decided in the plaintiff's favor on the ground that the defendant was not a *bona fide* holder, since he gave no present value for the return of the notes, and since having been paid they were then overdue. The defendant was therefore said to have no better title than Peed, whose transaction with the plaintiff the latter was entitled to avoid.

The grounds for the decision cannot but strike one as surprising. It would seem that the court made a distinct blunder in treating the matter as if the notes had been going forward, instead of backward; that is, in regarding the taking up of the notes by the maker as a further negotiation. That a note should be due or overdue at the time the maker takes it up is perfectly natural, and surely cannot be a warning to him that there is something wrong with it. And as for value, if that need be discussed, the English Bills of Exchange Act (sect. 27, 1, b) expressly provides that an antecedent debt or liability shall be valuable consideration. But the true ground on which the case should have been decided lies within the broad doctrine enunciated in *Price* v. *Neal*, 3 Burrow, 1354. See 4 HARVARD LAW REVIEW, 297. While the notes were in Peed's possession, before negotiation by him, the defendant had an equity against them, but on the transfer to the plaintiff, a *bona fide* purchaser for value,